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SENATE BILL 1348 By
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HOUSE BILL 1581
By Rinks

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 1, relative to tax administration.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 1, is amended by adding Sections 2 through 18 of this act as a new part to be appropriately designated.

SECTION 2. This part is enacted to establish an independent office of tax appeals which shall be responsible for providing the public with an informal system of resolving controversies with the department of revenue.

SECTION 3. In this part, unless the context otherwise requires:

- (1) "Office" means office of tax appeals created by this act.
- (2) "Party" means the department of revenue or the taxpayer.
- (3) "Proceeding" means only a proceeding under this part.
- (4) "Referee" means a referee of the office of tax appeal appointed under

Section 6.

(5) "Tax" means a tax, penalty, or interest levied or imposed in Tennessee Code Annotated, Title 57 or Title 67, Chapters 1-4 and 6-9, which are administered or collected by the department of revenue.

(6) "Taxpayer" means a person required to pay a tax.

SECTION 4. There is hereby created the office of tax appeals. For administrative purposes, the office of tax appeals shall be attached to the administrative office of the courts, established under Title 16, Chapter 3, Part 8.

SECTION 5. The office of tax appeals has jurisdiction to hear informal appeals from assessments of tax, or denials of tax refunds, by the department of revenue. Jurisdiction of the office is limited to, and this part applies to and governs, an informal administrative appeal regarding any taxes administered or collected by the department of revenue under Title 57 or Title 67, Chapters 1-4 and 6-9.

SECTION 6.

(a) The governor shall appoint a chief referee of the office of tax appeals, subject to confirmation by the senate, but an appointment shall be effective until adversely acted upon by the senate. If one (1) or more additional referees are established in the office of tax appeals, the governor shall appoint additional referees, subject to such confirmation by the senate.

(b) The initial term for a referee, including the chief referee, is four (4) years. The governor may reappoint a person appointed to serve as a referee, including the chief referee, to subsequent terms of four (4) years each; provided that such terms shall be staggered if more than one (1) such referee has been appointed.

(c) Upon notice of a referee opening, including a vacancy caused by the decision of an incumbent referee to not seek reappointment, a vacancy caused by the removal or resignation of a referee, or a referee opening resulting from the decision to add an additional referee position to the office, the governor shall advertise and invite applications for the position.

(d) The governor shall collect and review sufficient information to thoroughly evaluate each applicant. The review by the governor must include a published notice requesting written comments on the list of applicants for a referee opening.

SECTION 7.

(a) Upon a finding by the court of the judiciary that the chief referee or a referee has not complied with the code of judicial conduct or with the provisions of subsection (b), the court of the judiciary may recommend discipline or removal of such referee by the administrative director of the courts.

(b) In this section, "good cause" includes:

(1) Violation of the Tennessee code of judicial conduct, Rule 10 of the Rules of the Supreme Court;

(2) Conviction of a felony;

(3) Unjustified failure to handle the caseload assigned or similar nonfeasance of office;

(4) Failure to meet the requirements of Section 9 relating to qualification for office; and

(5) Unreasonable failure to comply with the statutes or regulations regarding the confidentiality of taxpayer information.

SECTION 8.

(a) The chief referee of the office of tax appeals shall exercise general supervision of the office and may select and hire staff for the office.

(b) A referee, including the chief referee, may preside over a proceeding and carry out any procedures authorized under this part.

(c) The chief referee may adopt regulations implementing or interpreting the provisions of this part including rules of procedure and evidence for proceedings before the office.

SECTION 9.

(a) A referee, including the chief referee, at the time of appointment shall be licensed to practice law in this state and shall have experience in the field of tax law or tax administration.

(b) A person appointed as a referee under Section 6 who is not licensed to practice law in this state at the time of appointment shall become licensed to practice law in this state within twelve (12) months after appointment or shall cease to hold office.

(c) A referee, including the chief referee, shall comply with Rule 10 of the Rules of the Supreme Court and, except as provided in (b) of this section, shall be and remain licensed to practice law in this state.

SECTION 10. An informal appeal under the jurisdiction of the office is initiated by filing with the office, and serving upon the commissioner of revenue, a notice of appeal from an assessment of tax or from a denial of a tax refund by the department of revenue. A notice of appeal may be amended at any time without cause.

SECTION 11. The referee shall hear all questions de novo under this part. The referee shall:

(1) Resolve a question of fact by a preponderance of the evidence or, if a different standard of proof has been set by law for a particular question, by that standard of proof; and

(2) Resolve a question of law in the exercise of the independent judgment of the referee.

SECTION 12. Service of documents required under this part may be accomplished in any manner authorized under the Tennessee Rules of Civil Procedure. If service is done only by mail, the date of service is determined by the date of mailing. If service is done by both mail and hand delivery, the date of service is determined by the earlier of the date of mailing or actual receipt of the documents.

SECTION 13.

(a) In the informal appeal under this part, discovery may take place only under a plan for discovery approved by the referee. The referee shall approve a plan for discovery to the extent consistent with the efficient, just, and speedy conduct of the appeal. The plan may limit or set conditions on discovery and must include provisions for stipulations of fact by the department of revenue and the taxpayer. Discovery shall be limited to information that is relevant to the determination of the correct tax or penalty.

(b) Requests by the taxpayer for disclosure of public records relating to the appeal are governed by, and the records are disclosed only in accordance with, the plan approved under this section.

SECTION 14.

(a) At or before the informal hearing, a party may present argument and evidence relevant to the amount of the tax, penalty or interest. The referee shall permit inquiry necessary to determine the proper amount of the tax, penalty or interest.

(b) Each party and witness shall be present during the informal hearing, except that:

(1) With the consent of the taxpayer, the referee may conduct all or part of the hearing by telephone, audio or video teleconference, or other electronic medium; and

(2) With the consent of the parties and the referee, all or part of the hearing may be conducted through correspondence.

(c) The taxpayer bears the burden of proof on questions of fact by a preponderance of the evidence unless a different standard of proof has been set by law for a particular question.

(d) The informal hearing before the referee is not required to be conducted with strict adherence to the Tennessee Rules of Evidence. Relevant evidence must be

admitted if it is probative of a material fact in controversy. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is admissible if it is the kind of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Oral evidence may be taken only on oath or affirmation. The rules of privilege are effective to the same extent that they are recognized in a civil action in the courts of this state, except that relevant documents, and other material items that are public records, shall be admissible.

(e) The referee may make a record of the proceedings by stenographic means.

(f) The referee may grant exceptions to the requirements of this section in the interest of justice.

SECTION 15.

(a) The referee and each party is responsible for the efficient, just, and speedy conduct of the informal hearing.

(b) Within ninety (90) days after the record on the appeal is closed, the referee shall issue a decision in writing. The decision must contain a concise statement of reasons for the decision, including findings of fact and conclusions of law. In the decision, the referee may grant relief, provide remedies, and issue any order that is appropriate. The referee shall serve each party in the case with a copy of the decision. Unless reconsideration is ordered under (c) of this section, the decision under this subsection is the administrative decision of the referee.

(c) A party may request reconsideration of a decision issued under (a) of this section within thirty (30) days after the date of service shown in the certificate of service of the decision. The request must state specific grounds for reconsideration.

Reconsideration may be granted if, in reaching the decision, the referee has:

- (1) Overlooked, misapplied, or failed to consider a statute, regulation, court or administrative decision, or legal principle directly controlling;
- (2) Overlooked or misconceived some material fact or proposition of law;
- (3) Misconceived a material question in the case; or
- (4) Applied law in the ruling that has subsequently changed.

(d) The referee may issue an order for reconsideration of all or part of the decision upon request of a party. Reconsideration is based on the record, unless the referee allows additional evidence and argument. A hearing on reconsideration at which additional evidence or argument is offered or received is subject to the procedures applicable to a hearing under Section 14.

(e) The power to order reconsideration expires ninety (90) days after the date of service, as shown on the certificate of service, of a decision issued under (b) of this section. If the referee does not issue an order for reconsideration within the time allowed for ordering reconsideration, the motion for reconsideration is deemed denied.

SECTION 16.

(a) Records, proceedings, and decisions under this part are confidential.

(b) An administrative decision issued under this part does not have the force of legal precedent in a civil action. However, to promote consistency among the administrative determinations issued under this part, the chief referee may review and circulate among the other referees the drafts of formal decisions, decisions upon reconsideration, and other legal opinions of the other referees in the office. The drafts are confidential documents and are not subject to disclosure under Section 10-7-503, or this chapter.

SECTION 17.

(a) An administrative decision under this part shall not prejudice in any manner the rights of the taxpayer to pursue judicial review of an assessment of tax, or to pursue

a denial of a tax refund, in accordance with the provisions of Title 67, Chapter 1, Part 18. An administrative decision under this part shall not constitute legal precedent in a judicial review, nor shall such administrative decision constitute findings which are admissible as evidence or otherwise binding in such judicial review.

(b) When an administrative decision has been issued which is favorable to the taxpayer in whole or in part, the department of revenue is authorized to compromise or settle with the taxpayer with respect to any controversy of tax, penalty or interest which is the subject of that administrative decision. The department of revenue in these circumstances is not required to so compromise or settle such controversy with the taxpayer, but the department of revenue is given such authority in the interest of efficient, just and speedy resolution of these tax controversies.

SECTION 18.

(a) At, or in connection with, any conference or hearing held pursuant to this part, taxpayers shall be entitled to the assistance of a qualified agent and of such other persons as they may wish.

(b) At any conference or hearing held pursuant to this part, taxpayers may appear in person, by qualified agent, or, in the case of individual taxpayers, by a member of the taxpayer's immediate family. An agent shall not have the power to appear for, or to act on behalf of, a taxpayer unless the agent presents a written authorization from the taxpayer at or prior to the conference or hearing.

(c) The following persons are permitted to act, appear and participate as an agent for the taxpayer:

- (1) Attorneys;
- (2) With respect to a corporation or other artificial entity, its regular officers, directors or employees; and
- (3) Certified public accountants; and

(4) Other professionals as may be approved by the referee.

SECTION 19. Tennessee Code Annotated, Section 67-1-1801(a)(1)(A) and (B), are amended by deleting these items and by substituting instead the following:

(A) The taxpayer may pay the tax and file a claim for refund thereof and proceed as otherwise provided in Title 67, Chapter 1.

(B) The taxpayer may appeal to the office of tax appeals pursuant to the provisions of this act or file suit against the commissioner in chancery court in the appropriate county in this state, challenging all or any portion of the assessment of such tax (including any interest and penalty associated therewith). Until the earlier of the expiration of ninety (90) days following the mailing of notice of assessment to the taxpayer or the filing of a suit by the taxpayer as provided in subsection (b), no levy as defined in Section 67-1-1404 shall be made, begun or prosecuted by the commissioner. The commissioner may, however, initiate and pursue any other action to collect an assessed deficiency under Part 14 of this chapter or otherwise, including, but not limited to, the filing of a notice of lien as provided in Section 67-1-1403 and the collection of a jeopardy assessment.

SECTION 20. Tennessee Code Annotated, Section 67-1-1801(c)(1), is amended by deleting the language “thereof, if the taxpayer also files with the taxpayer’s suit one (1) of the following:” and by substituting instead the following:

. Upon the filing of a suit a taxpayer may also be required to file, in the discretion of the commissioner, one (1) of the following:

SECTION 21. Tennessee Code Annotated, Section 67-1-1801(c)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following new subdivision (3):

(3) At any time prior to the filing of suit by the taxpayer and regardless of whether the taxpayer has filed an appeal to the office of tax appeals, the commissioner,

in the commissioner's discretion, may hold informal conferences with the taxpayer without the requirements of timely written request therefor.

SECTION 22. Tennessee Code Annotated, Section 67-1-1801(d), is amended by inserting the language "or appeal to the office of tax appeals" immediately after the word "suit" wherever it appears in the subsection.

SECTION 23. Tennessee Code Annotated, Section 67-1-1801(e), is amended in the first sentence of the subsection by inserting the language "or appealed to the office of tax appeals" immediately after the word "suit".

SECTION 24. Tennessee Code Annotated, Section 67-1-1801(j), is amended in the first sentence of the subsection by deleting the language "file suit" and by substituting the language "file an appeal to the office of tax appeals or to file suit".

Tennessee Code Annotated, Section 67-1-1801(j), is further amended by changing the comma (,) after the words "date of such notice" to a period (.) and by deleting the remainder of the language of the subsection following such words.

SECTION 25. Tennessee Code Annotated, Section 67-1-110(c)(15), is amended by deleting the language in its entirety and by substituting instead the following new language:

(15) A speedy, informal appeal of any tax dispute before an impartial hearing officer from the office of tax appeals and to be represented by an attorney, certified public accountant or other representative; and

SECTION 26. There is hereby transferred from the department of revenue to the office of tax appeals all positions, funding and office furniture and equipment that are for the support and conduct of hearings on the appeals of tax disputes by hearing officers in the department of revenue.

SECTION 27. This act shall take effect January 1, 2001, the public welfare requiring it.